

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  50T5367.01	
<p style="text-align: center;">Certificate of Electronic Transmission Under 37 C.F.R. §1.8</p> <p>I hereby certify that this correspondence and any document referenced herein are being electronically filed with the USPTO via EFS-Web on <u>February 19, 2010</u>.</p> <p style="text-align: center;"><u>Marjorie Scariati</u> (Printed Name of Person Sending Correspondence)</p> <p style="text-align: center;"><u>/ Marjorie Scariati /</u> (Signature)</p>		Application Number  10/806,687	Filed  March 23, 2004
		First Named Inventor  Andrew Mark Proehl	
		Art Unit  2442	Examiner  Robert B. Harrell
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,721</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ Signature</p> <p>_____ Karin L. Williams Typed or printed name</p> <p>_____ 908-518-7700 Telephone number</p> <p>_____ February 19, 2010 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

## **REMARKS**

Claims 1 and 3-7 are now pending in this application; Claims 8, 10-13, 15-17 and 19-20 were withdrawn from consideration in light of a restriction requirement that was issued after a first substantive office action and have now been canceled. Claims 1 and 6 are the only independent claims under consideration.

## **Rejections under 35 U.S.C. 102(b) and 103(a)**

Claims 1 and 3-7 were rejected under 35 U.S.C. 102(e) as being anticipated by newly-cited Karas (US Patent Application Publication No. US 2003/0130907 A1) and also under 35 U.S.C. 103(a) as being unpatentable over Karas. In view of the following comments, Applicant respectfully traverses each of these rejections and requests reconsideration.

Applicant notes that the Advisory Action provides no substantive comments on the Applicant's arguments/response submitted on January 19, 2010, but simply states that the reasons are outlined in the Final Office Action (Applicant also notes that Karas was cited for the first time in the Final Action – and therefore the arguments submitted by Applicant in the January 19, 2010 response, were not previously considered, nor has the Examiner responded to such arguments).

Karas is directed to “electronic gift linking”, in which an electronic greeting card provides an embedded ‘code’ that is indicative of the gift (Abst).

Applicant's independent Claim 1 is directed to a method for interacting with a user over a peer-to-peer network, including receiving a file from a user via a third party, receiving with the file an alias identifying the user and a content rating from the user, the content rating providing an indication of the user's rating of the file, storing in the third party identity information about the user in association with the alias, and linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identify and the financial account.

Again, independent Claim 1 was previously amended to include the limitations of original dependent Claim 2, and specifically to clarify that the content rating from the user provides an indication *of the user's rating of the file.*

Independent Claim 6 recites each of the elements of Claim 1 and further recites the step of aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases.

Applicant respectfully directs the Examiner at least to paragraphs [0021], [0026] and [0027], and to Figure 3, ‘rating 33’, of Applicant’s specification as filed. As described therein, a meta data file is attached to transferred content, and “each recipient 31, 32 of the content file 34 receives a history of *who sent the content, and the rating 33 these people applied to the content 34*” (i.e., the ‘recommendations’ or ‘ratings’ of the person sending the content are provided to the recipients of that content).

Applicant respectfully submits that Karas fails to teach or suggest this element. With regard to the recited step of *receiving a file including a content rating* from the user, *the content rating providing an indication of the user’s rating of the file*, the Final Action directs Applicant to paragraph [0072] of Karas (see page 3, paragraph 9(b) of Final Action).

In paragraph [0072], Karas describes how a sender 110 may include a ‘personalized portion 708’ in a card “with possible hot links to information”. Karas notes:

“when creating the eCard, certain **predetermined information** is ‘made available’, such as, product information, retailer information, manufacturer information, product reviews, tracking information, warranty information, content ratings, safety ratings, recall information, frequently asked questions, care instructions, clearing status of a money transfer,....”.

Applicant submits that Karas does not teach or suggest that a method of interacting with a user in a peer-to-peer environment, including receiving a file from a user via a third party, and receiving with the file, an alias identifying the user and a content rating from the user, the content rating providing an indication of the user’s (i.e., the person sending the file) rating of the file – rather in Karas, only ‘predetermined information’ is ‘made available’. There is simply no teaching or suggestion in Karas that an indication of the USER’S RATING (the “user” being the person who is sending the file) is provided with the file.

In addition, even the information that is ‘available’ is not a ‘rating’ *regarding the file* – as noted in paragraph [0031] of Karas, a “code *indicative of the gift* is created...[and] facilitates

retrieving information about the gift” (the ‘file’ sent in Karas is an electronic greeting card (see Examiner’s assertion in paragraph 9, line 3 – “a file (i.e., *Greeting Card* per figure 12(A))” – the code that is embedded into the card allows the recipient to retrieve information about the gift (again, not about the ‘card’ (or file), and not including any rating information from the sender about the e-card).

For at least these reasons, Applicant respectfully submits that independent Claim 1 is patentable over Karas, and reconsideration is requested.

Independent Claim 6 recites each of the elements of Claim 1 and further recites the step of aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases.

The Action states (para. 11) that “paragraph [0072 (line8)] (of Karas) clearly taught ‘product reviewS’, in the plural...”. Again, Applicant traverses this reading of Karas – and submits that Karas does not teach or suggest that a review “of the person sending the file” is provided to the recipient (para. [0072] of Karas states that “when creating the eCard, certain *predetermined information is made available, such as product information....*” – this does not provide any teaching or even suggestion of sending a file to a recipient, wherein the recipient receives with the file an alias identifying the user and a content rating of that file from the user).

Although Claims 1 and 3-7 were all stated as being rejected under 35 USC 103(a), the only discussion as to this rejection is found at paragraph 15 of the Final Action, which discussed only independent Claim 6 (with no mention of Claims 1, 3, 4, 5 or 7). It is believed that further information is required in a rejection under 103(a).

With regard to the 103(a) rejection as to Claim 6, paragraph 15 of the Action takes the position that “paragraph [0071] (of Karas) taught that the Greeting Card has a greeting portion 704 which could include animation or moving pictures [and] thus it would have been obvious...for the sender to send a Greeting Card with a humorous message content 704, and a content *rating* such as ‘Everyone in the Office Likes This One’” (emphasis added herein).

Applicant respectfully traverses this alleged ‘obvious’ modification of the *actual* teachings of Karas. In fact, Karas describes only that a sender “chooses a greeting portion 704 of the card 700 that might have a cartoon, animation, picture, moving picture, and/or message” –

this simply does not teach, or even *suggest*, that a recipient of such an eCard in Karas would receive a content file *with a rating that the sender applied to the content* (again, see para. [0021 of Applicant's specification, "each recipient 31, 32 of the content file 34 receives *a history* of who sent the content and *the rating 33 these people applied to the content 34*"). The Examiner is attempting to read something into the teachings of Karas that simply is not provided by Karas.

For at least the foregoing reasons, Applicant respectfully submits that Claim 6 is also patentable over Karas.

Dependent Claims 3-5 and 7 are believed patentable over the art of record for at least the same reasons as Claims 1 and 6, one or the other from which they depend, and as reciting additional distinguishing limitations.

Reconsideration and withdrawal of the rejections under 35 U.S.C. 102(e) and 103(a) are respectfully requested.

### **CONCLUSION**

In view of the above, Applicant submits that all pending claims are in condition for allowance. If the Examiner believes there are still unresolved issues, a telephone call to the undersigned would be welcomed.